

OCT 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JOHN G. WESTINE, JR.,

Plaintiff - Appellant,

v.

UNITED STATES PROBATION
DEPARTMENT; et al.,

Defendants - Appellees.

No. 06-56404

D.C. No. CV-06-03748-ABC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Submitted October 1, 2007 ^{**}

Before: B. FLETCHER, BERZON and IKUTA, Circuit Judges.

The motion to proceed in forma pauperis is granted. The Clerk shall amend the docket to reflect this status.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellant John G. Westine, Jr. appeals from the district court's order denying his request to file a petition for writ of mandamus, dated July 7, 2006, without prepayment of the filing fee. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the district court's denial for abuse of discretion, *see, e.g., Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998), and we vacate and remand.

The district court denied appellant's motion to file without prepayment of the filing fee for three reasons: (1) inadequate showing of indigency; (2) failure to authorize disbursements from prison trust account to pay filing fee; and (3) failure to provide certified copy of trust fund statement for the prior six months, apparently applying the requirements of 28 U.S.C. § 1915(a)(2) to the application. However, because appellant's petition sought to vacate as void ab initio a criminal judgment entered against appellant, the provisions of 28 U.S.C. § 1915(a)(2) do not apply.

Accordingly, we vacate and remand for the district court to allow appellant to proceed in forma pauperis unless it finds other reasons for the denial.

VACATED and REMANDED.